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Letter dated 31 July 1990 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

I have the honour to submit, enclosed herewith, a letter addressed to you by His Excellency Mr. Özer Koray, Representative of the Turkish Republic of Northern Cyprus, to which is attached the text of a paper entitled "Opinion on the legal status in international law of the Turkish Cypriot and the Greek Cypriot communities in Cyprus".

I would be grateful if my letter and its enclosures could be circulated as a document of the General Assembly, under agenda item 47, and of the Security Council.

(Signed) Mustafa AKŞIN
Ambassador
Permanent Representative

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ANNEX

Letter dated 31 July 1990 from Mr. Özer Koray to the Secretary-General

Upon instructions from my government, I have the honour to enclose herewith the text of a paper entitled "Opinion on the Legal Status in International Law of the Turkish Cypriot and the Greek Cypriot Communities in Cyprus" written by eminent United States lawyer Mr. Monroe Leigh, dated 20 July 1990.

(Signed) Özer KORAY
Representative of the
Turkish Republic of
Northern Cyprus

APPENDIX

Opinion dated 20 July 1990 on the legal status in international law of the Turkish Cypriot and the Greek Cypriot communities in Cyprus prepared by Mr. Monroe Leigh

I have been asked to give an opinion on the status in international law of the Turkish Cypriot and Greek Cypriot communities in Cyprus. Negotiations concerning the relationship between the two communities in Cyprus have for some time been taking place under the auspices of the Secretary-General of the United Nations. After a review of the historical and legal situation of Cyprus, it is my opinion that the Greek Cypriot and Turkish Cypriot régimes participating in these negotiations, and the respective communities which they represent, are presently entitled to exercise equal rights under international law, including rights of self-determination.

Before considering in detail the legal position of the Greek and Turkish Cypriots, I wish to make an important point about my use of terminology in this opinion. I understand that there has been much discussion between Mr. Denktas, President of the Turkish Republic of Northern Cyprus, Mr. Vassiliou, President of the (Greek) Republic of Cyprus, and the Secretary-General of the United Nations, Mr. Pérez de Cuéllar, about how to refer to the Greek Cypriots and the Turkish Cypriots, both during the course of their negotiations and also in the new political order which it is their aim to establish in Cyprus. In my opinion, whether these entities are referred to as communities, peoples, constituent parties, régimes, or by any other term, has no determinative or conclusive effect on their present international legal status.

Any analysis of the position of the Greek Cypriot and Turkish Cypriot peoples in international law must begin with the establishment on the Island of Cyprus, in 1960, of the Republic of Cyprus. The government of the Republic of Cyprus established in accordance with the 1960 Constitution succeeded the British colonial administration as the legitimate government of the territory comprising the island of Cyprus on 16 August 1990. 1/

The colony of Cyprus achieved its independence following the promulgation of three multilateral treaties, which in turn evolved from an earlier document known as the London Memorandum. 2/ Each treaty was signed by representatives of Britain, Greece, Turkey, and, for the Republic of Cyprus, by representatives of both the Greek Cypriot community and the Turkish Cypriot community, in their separate capacities. In the Treaty of Establishment it was contemplated that the Republic of Cyprus would have sovereignty over the territory of the former colony, with the exception of two British military installations. In the Treaty of Guarantee, the signatories undertook to recognize and guarantee the independence, territorial integrity and security of the Republic of Cyprus, and "the state of affairs established by the Basic Articles of its Constitution." Finally, in the Treaty of Alliance, the signatories undertook to resist any attack or aggression directed against the independence or territorial integrity of the Republic of Cyprus. 3/

The Constitution of Cyprus, which entered into force on the same day as the three treaties, was the product of two prior international agreements. The "Basic Articles" of the Constitution were first set out in the Zurich Agreement of 11 February 1959, between Greece and Turkey. These Basic Articles, which will be discussed below, largely determined the structure of the Government of the Republic of Cyprus, including the precise manner in which power would be shared by the Greek Cypriot and Turkish Cypriot communities. Representatives of the Greek Cypriot and Turkish Cypriot communities initialled the Agreement. In the Agreed Measures to Prepare for the New Arrangements in Cyprus, of 19 February 1959, Greece, Turkey and Britain agreed that a Joint Constitutional Commission composed of representatives of the Greek Cypriot and Turkish Cypriot peoples, Greece and Turkey would draw up a final Constitution incorporating the Basic Articles.

The Constitution thus developed effectively incorporated all of these international agreements. Article 181 of the Constitution declares that the Treaties of Guarantee and Alliance "shall have constitutional force." Article 182 of the Constitution provides that the Basic Articles, derived from the Zurich Agreement, "cannot, in any way, be amended, whether by way of variation, addition or repeal." Article 185 states that "the territory of the Republic is one and indivisible" and that total or partial union with any other State or separatist independence is excluded.

The international agreements by means of which the Republic of Cyprus was established as a sovereign state and under which the structure of its government was determined, as well as the Constitution resulting from them, recognized as binding among the parties the equal status of the Greek Cypriot and Turkish Cypriot communities, and their equal rights to an effective role in the government of their island and in determining their political futures. At the outset of the negotiations leading to the independence of Cyprus, the British Colonial Secretary, Mr. Lennox-Boyd, declared: "it will be the purpose of Her Majesty's Government to ensure that any exercise of self-determination should be effected in such a manner that the Turkish Cypriot community, no less than the Greek Cypriot community, shall, in the special circumstances of Cyprus, be given freedom to decide for themselves their future status." 4/ Therefore, in all of these documents rights to determine their political future were recognized in both the Greek Cypriot community and the Turkish Cypriot community, and they in turn pledged to exercise those rights jointly to create a single state governing all the territory and peoples of Cyprus.

The Basic Articles of the Constitution were carefully drafted to perpetuate both the recognized equality of the two communities and their obligation to share the attributes of sovereignty. The very first article provided that the President of the Republic would be a Greek Cypriot and the Vice-President would be a Turkish Cypriot. These officials were to be elected simultaneously but separately by majority votes of their respective communities. Unlike most presidents and vice-presidents, these two officers shared most essential executive powers. Most importantly, each was empowered to veto in whole or in part any law concerning foreign affairs, defense or security. Article 50. The Council of Ministers, the House of Representatives, the judiciary, the military and the civil service were likewise divided between the two communities in agreed proportions, "independent of

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any statistical data." Articles 46, 62, 123, 129, 153. In order to be enacted, most important laws required concurrent majority votes in the delegations of the two communities to the House of Representatives. Article 78. Taken together, these articles assured that neither community could take significant political action at the national level without the other's concurrence.

Concomitantly, a second group of constitutional articles gave the two communities extensive powers of self-government. All legislative power concerning matters of religion, education, personal status, municipal institutions and affairs was reserved to the exclusive competence of a Greek Cypriot and a Turkish Cypriot Communal Chamber, each elected by and ruling over its respective community. Each Communal Chamber could appoint judges to hear disputes arising out of matters under its competence and could raise taxes from its own people to support its separate programmes. Articles 86 and 87. In addition, separately governed Greek Cypriot and Turkish Cypriot municipalities were to be created in the five largest towns in Cyprus. Article 174.

The Republic of Cyprus was duly declared on 16 August 1960, and promptly recognized by the international community. The Republic was admitted to the United Nations on 21 September 1960, became an independent member of the British Commonwealth on 13 March 1961 and became the sixteenth member of the Council of Europe on 24 May 1961.

Unfortunately, this carefully balanced and internationally sanctioned régime lasted only a little over three years. On 30 November 1963, Archbishop Makarios, the duly-elected Greek Cypriot President of the Republic, proposed to the Guarantor powers thirteen amendments to the Cypriot Constitution. 5/ These proposed amendments - six of them to Basic Articles which were declared immutable by treaty and constitutional provision - had as their obvious purpose the elimination of the carefully negotiated balance of power between the two communities. 6/ When adopted these thirteen amendments would decisively shift the balance of power so as to favour the numerical majority - and hence assure Greek Cypriot rule. 7/

Civil disorder and armed violence broke out throughout the island. As an element of this crisis, the Turkish Cypriot members of the Government of the Republic of Cyprus either withdrew or more likely were forced from their offices. 8/ Shortly thereafter, the Greek Cypriot members of the government, purporting to act in legitimate exercise of their offices, enacted all thirteen amendments. They contended that the Turkish Cypriots could now only be re-admitted as partners in the administration if they accepted the amendments passed in their absence. 9/ Since the Turkish Cypriot members could not accept these illegal amendments, they never resumed their seats in the legislature.

The unilateral usurpation of authority by the Greek Cypriots was an obvious violation of the Constitution, as well as the treaty obligations accepted by the Greek Cypriot community. The Greek Cypriot régime had violated Article 182 of the Constitution, which stated that the Basic Articles "[could] not, in any way, be amended, whether by way of variation, addition or repeal," and which required concurrent two-thirds votes of the Greek Cypriot and Turkish Cypriot members of the House of Representatives for all other amendments. Their actions simultaneously

contravened Article I of the Treaty of Guarantee, in which the Republic of Cyprus undertook "to ensure ... respect for its Constitution." Both Britain and Turkey issued diplomatic protests condemning the amendments as "contrary to the Constitution of the Republic of Cyprus, which is under the safeguard of international treaties." 10/ These 13 amendments, and the situation dependent upon them in the area under Greek Cypriot control, cannot therefore be validly accorded any international recognition.

From 1964 until the present, the Greek Cypriot régime has claimed to be the legitimate government of the Republic of Cyprus, with sovereign rights over the whole Island and all of its inhabitants. There is no legal basis in international law for such a claim. The formation of a régime founded on the unilateral usurpation of rights specifically reserved to the Turkish Cypriot people contravenes the plain language and obvious intent of the Treaty of Guarantee, the Zurich Agreement and the 1960 Constitution. The Greek Cypriot régime is neither the government of the "Republic of Cyprus" originally recognized by the community of nations in 1960 nor the legitimate successor of that government. The Greek Cypriot régime therefore had in 1964 and has today no right under international law to claim that it speaks for the Turkish Cypriot community or that it wields the sovereign powers that devolved upon the Republic of Cyprus in 1960.

Whatever the pretensions of the Greek Cypriot régime, the practical consequence of the events of 1963-1964 was the emergence of parallel administrative, judicial and legislative organs for each of the two peoples. Increasingly from 1964 onwards, the Greek Cypriot régime which purports to be the government of the Republic of Cyprus has not exercised over the Turkish Cypriot people any of the significant incidents of sovereign control reserved to the Government of the Republic of Cyprus in the 1960 Constitution. 11/ Instead, virtually all decisions governing the conduct of Turkish Cypriots have been made by the governmental institutions of the Turkish Cypriot community, and virtually all decisions concerning the conduct of Greek Cypriots have been made by the governmental institutions of the Greek Cypriot community. Physically, the two communities have become increasingly separated. 12/

This practice of parallel self-government and physical separation of the two Cypriot communities continued after the coup of 15 July 1974, staged by elements of the Greek Cypriot National Guard but foiled by the Turkish intervention, which began on 20 July. In the Geneva Declaration of 30 July 1974, the Foreign Ministers of Greece, Turkey and Britain noted "the existence in practice in the Republic of Cyprus of two autonomous administrations, that of the Greek Cypriot community and that of the Turkish Cypriot community." The Turkish intervention 13/ could not and did not alter the equal legal status of the two Cypriot communities, which derived from the earlier treaties and Constitution; nor was it the origin of the physical separation of the Greek and Turkish Cypriot peoples, who had been living as separate, self-governing communities since at least 1964.

The legal rights of the Turkish Cypriot community predate and were manifested by the proclamation in 1975 of the Turkish Federated State of Cyprus. The Turkish Cypriots considered it necessary to "creat[e] in their own region the legal basis of an order leading to the establishment of the future independent, Federal

Republic of Cyprus" and reaffirmed that "their final objective is to unite with the Greek Cypriot community within the framework of a biregional federation." 14/ This exactly describes the form of the federal system toward which the leaders of the two communities, meeting under the auspices of the Secretary-General of the United Nations, subsequently agreed to negotiate in their Four Guidelines of 12 February 1977. 15/

Similarly, the long-delayed decision of the Turkish Cypriot Community in 1983 to declare itself the independent Turkish Republic of Northern Cyprus cannot lessen the rights to self-determination that the Turkish Cypriot people share equally with the Greek Cypriot people. For more than 20 years the Turkish Cypriot community has negotiated in good faith with representatives of the Greek Cypriot community to come to a lasting political solution to their island's troubles. The fact that the Turkish Cypriots restrained themselves for 20 years from proclaiming a separate Turkish Cypriot Republic was, under the circumstances, an act of continuing forbearance, the exhaustion of which can hardly be condemned, and stands in sharp contrast to the actions of the Greek Cypriot community in forcibly dismantling the constitutional Cypriot régime three years after their specific commitment to preserve it. 16/ The events of 1983 are not the source of the Turkish Cypriots' legal rights to determine their political future and to play an effective role in the government of the island, nor did they alter those pre-existing legal rights.

Much consequence has been drawn by some observers, and by the Greek Cypriot community, from the fact that numerous States have recognized the Greek Cypriot régime as the sole government of Cyprus. Although certain minimal criteria of statehood are required by customary international law, the recognition of governments is, none the less, an act of an inherently political, rather than legal, character. 17/ The mere fact of international recognition, no matter how widespread, cannot excuse or confer legitimacy upon the violations of both domestic constitutional law and international treaty law through which the Greek Cypriot régime usurped the name as well as the government of the "Republic of Cyprus," particularly since it never exercised sovereignty over the whole island. 18/

In any event, the most that can be said is that the international community has not withdrawn its recognition of the Republic of Cyprus established in 1960. The recognition of a government cannot automatically carry with it the recognition of all future governments of that state. 19/ The Greek Cypriot régime has assumed the title "Republic of Cyprus" but abandoned the substance. Since that time, no state has affirmatively recognized a "Greek Republic of Cyprus" based on the amended constitution. All they have done is continue to treat Cyprus as a single state.

When the subject of statehood, rather than recognition, is examined, it is apparent that the territory controlled by the Turkish Cypriot government is at present no less eligible for statehood than its Greek Cypriot counterpart. The traditional indicia recognized by customary international law for the existence of a state are: a permanent population, a reasonably well-defined territory, an effective government, and independence from foreign control of decision-making, particularly regarding relations with other states. 20/ "An entity that satisfies

[these] requirements ... is a state whether or not its statehood is formally recognized by other states." 21/

Since the Turkish Republic of Northern Cyprus satisfies all the formal legal prerequisites for statehood, 22/ it is clear that international law does not forbid its recognition by other states. 23/

Even though resolutions of the Security Council of the United Nations have condemned or regretted certain events that have taken place on Cyprus, including the Turkish Cypriots' declaration of independence, the resolutions of the Security Council and the General Assembly have consistently recognized that, in the context of negotiations between the two Cypriot communities, they should and do bargain "on an equal footing." 24/ The Secretary-General has for many years offered his good offices to the two Cypriot communities to foster negotiations toward a mutually satisfactory settlement. Under his auspices, Greek Cypriot and Turkish Cypriot representatives have entered into several interim agreements indicating that neither community enjoys any special status relative to the other. 25/ In a recent resolution the Security Council reiterated its call for the two communities to "reach freely a mutually acceptable solution." 26/ Thus while the United Nations has not recognized the Turkish Republic of Northern Cyprus by admitting it to membership, it has always accepted the Turkish Cypriot community's right to determine its political future not only in conjunction with but also on an equal footing with the Greek Cypriot community.

Putting aside the talisman of recognition, it is clear that neither of the governments existing on the Island is qualified to assert that it is the government of the "Republic of Cyprus." But while the treaties and agreements of 1959-1960 cannot legally be disregarded by one party in its own interest, they can surely be replaced by the assent of both parties to a new, mutually satisfactory political order. Thus, sovereignty would devolve fully and legitimately on any new Cypriot government if the successor state or states were the product of a concurrent exercise of self-determination by the two communities superseding the joint exercise through which the 1960 Republic was established. 27/

In summary, the Turkish Cypriot community has a legal right to negotiate from a status of equality with the Greek Cypriot community in the current attempt, under the auspices of the Secretary-General, to reach a workable political solution for the unfortunate situation in Cyprus. The Greek Cypriot people has never had the right to assert sovereignty over the Turkish Cypriot people without their consent. Nor, from the moment the Greek Cypriots unilaterally rejected the constitutional basis on which the legitimacy of the Cypriot government rested in international law, has the Greek Cypriot régime had any right to assert sovereignty over the island. Since that time, practical necessity has created two governments on Cyprus. The rights of the peoples of the two communities to determine their own political futures have remained unchanged and in all respects are equal. The nations of the world, through resolutions of the Security Council and General Assembly of the United Nations, have recognized and consistently reaffirmed these rights, as have the two communities themselves in their interim negotiated agreements. Under these circumstances, international law does not sanction differential treatment of the two communities in the current negotiations or in any

resulting settlement. If these efforts to establish a federal government of Cyprus - with the equal participation and mutual acceptance of the two peoples - should fail, each régime - the Turkish Cypriot no less than the Greek Cypriot - would be eligible for recognition as an independent state. Such recognition by other states would not then infringe any principle of international law.

Notes

1/ Sovereignty was formally passed from Britain to the Republic of Cyprus by the Cyprus Act, 1960, 8 and 9 Eliz. II, c. 52.

2/ The London Memorandum of 19 February 1959 was a collection of agreements signed by the Prime Ministers of Great Britain, Greece and Turkey "as the agreed foundation for the final settlement of the problem of Cyprus". These agreements included texts for the Treaties of Guarantee and Alliance (United Nations, Treaty Series, vol. 382 (1960), No. 5475 and ibid., vol. 397 (1961), No. 5712), the "Basic Structure of the Republic of Cyprus" (an outline of the essential provisions of the anticipated Cypriot Constitution), and declarations by representatives of the Greek Cypriot and Turkish Cypriot communities accepting the other documents "as the agreed foundation for the final settlement of the problem of Cyprus."

3/ Great Britain was not a signatory to the Treaty of Alliance.

4/ 562 Parliamentary Debate, House of Commons (5th ser.) 1267-68 (1956). He explained that in the event of any exercise of self-determination in the colony, "I cannot see how it is anything other than logical to grant a community with such close interests with Turkey, and only 40 miles away, the same rights as we are prepared to recognise should go to the Greek community." See ibid., pp. 1269-70. "In other words," he said, "Her Majesty's Government recognise that the exercise of self-determination in such a mixed population must include partition among the eventual options." See ibid., pp. 1267-68. For a further illustration of this point of view, see Blay, "Self-Determination in Cyprus: The New Dimensions of an Old Conflict", 10 Australian Yearbook of International Law 67, 71-72 (1984) (describing this speech as illustrative of an "implied concept of double self-determination for Cyprus").

5/ The text of these proposed amendments is most conveniently set out in Ehrlich, "Cyprus, the 'Warlike Isle': Origins and Elements of the Current Crisis", 18 Stanford Law Review 1021, 1043 n. 95 (1966).

6/ That the amendments were in fact intended to eliminate the constitutional balance of power has received confirmation in published accounts of the "Akritas Plan". The Akritas Plan was first publicized in the Greek Cypriot newspaper Patris on 21 April 1966. According to J. Reddaway, this plan was a blueprint for securing Greek dominance and suggests that one of the goals of the amendments was to ensure the withdrawal of the Turkish Cypriots from their role in the government established by the Constitution. J. Reddaway, Burdened with Cyprus, pp. 133-34 (1986). While the authenticity of the plan has been questioned, Glafkos Clerides, then Greek Cypriot President of the House of Representatives, confirmed it as

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genuine in an interview with Richard Patrick in 1971. R. Patrick, Political Geography and the Cyprus Conflict (1976).

7/ The government of Turkey immediately rejected the proposal. The Times (London), 7 December 1963, p. 7. Archbishop Makarios refused to accept any rejection by the Turkish Cypriots. The Times (London), 24 December 1963, p. 6.

8/ Exactly how the Turkish Cypriot members of the government were removed is a matter of historical dispute. Some sources claim that they voluntarily walked out in protest. See, e.g., Blay, supra note 4, p. 77 ("When the Turkish Cypriots withdrew from the government in the 1963-1964 crisis ..."); Evivriades, "The Legal Dimension of the Cyprus Conflict", 10 Texas International Law Journal 227, 247 (1975) ("The Turkish Cypriots, alleging a preconceived Greek plan for their extermination, withdrew from the government and barricaded themselves in their own neighborhoods, refusing to allow intercourse with the Greek Cypriots unless their constitutional rights were strictly observed."). Others claim that they were forcibly removed from their offices by the Greek Cypriots. See, e.g., M. Tamkoc, The Turkish Cypriot State: The Embodiment of the Right of Self-Determination 74 (1988) ("This was a peculiar, probably a unique, takeover of the government of a State, because the governing leadership dislodged their colleagues from office by brute force, colleagues who had as much right as they to manage the affairs of a functionally federated State."); N. Ertekun, The Cyprus Dispute and the Birth of the Turkish Republic of Northern Cyprus 11 (2nd ed. 1984) ("All Turkish Cypriots were physically barred from taking part in the administration of the Island."). Still other sources admit that they do not know the truth. See, e.g., Wolfe, "Cyprus: International Law and the Prospects for Settlement", 84 Proceedings of the American Society of International Law 107, 109 (1984) ("Turkish Cypriot leaders withdrew or were forced from government ...").

Whatever the reason for their physical absence, it is clear that they did not formally resign their offices. Dr. Kutchuk continued to identify himself as the Vice-President of the Republic of Cyprus, although in 1965 the "Government ... stated that it no longer recognized Dr. [Katchuk] in his capacity as Vice-President." See report of the Secretary-General on recent developments in Cyprus (S/6569, para. 10) (29 July 1965).

9/ See report of the Secretary-General on recent developments in Cyprus (S/6569, para. 11) (29 July 1965) (noting that Mr. Clerides, President of the House of Representatives, "made it plain [to Turkish Cypriot members seeking readmission to the House] that, unless [the Turkish Cypriots agreed to four preconditions, including acceptance of laws passed in their absence abolishing the constitutional requirement of separate majorities], he would not permit the Turkish Cypriot members to attend the House. Mr. Clerides also stated that the constitutional provisions concerning promulgation of the laws by the President and the Vice-President were no longer applicable. He subsequently stated that in his opinion the Turkish Cypriot members had no legal standing any more in the House.").

Notes (continued)

10/ Note dated 27 July 1965, from the Turkish Embassy in Nicosia to the Minister for Foreign Affairs of Cyprus (concerning the amendment to the electoral law abolishing separate Greek and Turkish Cypriot electoral rolls). See note dated 24 July 1965 from the British High Commission in Cyprus to the Government of Cyprus (objecting to the passage of the law providing for elections without divided electoral rolls by stating that "[a]s one of the Guarantor Powers the British Government protests against this action which is in breach of basic articles of the Constitution of the Republic of Cyprus."). These diplomatic notes and the Greek Cypriot replies rejecting both notes are reprinted in United Nations document S/6569/Add.1 (5 August 1965).

11/ See report of the Secretary-General on the United Nations Operation in Cyprus (S/6228, para. 203) (11 March 1965) (noting the "inaccessibility of the areas inhabited entirely by Turkish Cypriots to the Government's law-enforcing authorities and officials. The organs of the State are thus powerless in these areas to administer justice."). For example, this government has never collected any taxes from the Turkish Cypriot community. See ibid., paras. 178-181 (describing the Turkish Communal Chamber's withdrawal of authority from the Cyprus Inland Revenue Department to collect the Chamber's income tax from Turkish Cypriots, effective 18 February 1965). Likewise, its courts have not judged cases involving Turkish Cypriots. See ibid., para. 193 (In Nicosia "[t]he work of the courts, however, has been almost entirely confined to those cases where the parties involved are Greek Cypriots. Only Greek Cypriot litigants and Greek Cypriot counsel have attended the courts to transact business.").

12/ This physical separation began well before the 1974 Turkish intervention. See report of the Secretary-General to the Security Council on United Nations operations in Cyprus (S/5950, paras. 29-30) (10 September 1964) (describing the creation of Turkish Cypriot enclaves after December 1963, especially concentrated in Nicosia and its northern suburbs, a narrow strip astride the road from these suburbs to Kyrenia, the town of Louroujina, the Lefka region and two beachheads at Kokkina and Limnitis); report of the Secretary-General on recent developments in Cyprus (S/6569 and Add.1 and 2) (29 July 1965) (describing a reference made by Mr. Clerides, the Greek Cypriot President of the House of Representatives, to "Turkish [Cypriot] areas").

13/ Although legal commentators disagree on the legitimacy under international law of the extension of the Turkish intervention in August of 1974, it remains a fact that the situation was under close scrutiny by the Security Council and that body did not at any point determine that the Turkish action was a breach of the peace or an act of aggression. The furthest that the Council went was to express concern at the situation resulting from "military operations" (a term broad enough to include the actions of Greek as well as Turkish forces) "which constituted a most serious threat to peace and security in the Eastern Mediterranean area" and to record "its formal disapproval of unilateral military actions undertaken against the Republic of Cyprus" (again a term which, being used in the plural, was wide enough to cover Greek no less than Turkish military action). United Nations Security Council resolution 360 (1974). In any case, the

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important point is that the Turkish intervention is not the source of the Turkish Cypriots' rights to determine their political future. Nor should the Turkish Cypriot people be chargeable with responsibility for the actions of the government of Turkey in 1974 under its interpretation of its responsibilities as a Guarantor Power under the 1960 treaty.

14/ S/11624, annex II (1975) (entitled "Statement by Vice-President Denktas dated 13 February 1975").

15/ See S/12323. Guideline 1 reads: "We are seeking an independent, non-aligned bi-communal Federal Republic." Guideline 2 anticipated that there would be "territory under the administration of each community."

16/ Indeed, the parliamentary resolution declaring the foundation of the Turkish Republic of Northern Cyprus contained specific assurances that the "proclamation of the Turkish Republic of Northern Cyprus will not hinder the two equal Peoples and their administrations from establishing a new partnership within the framework of a genuine federation". Declaration of Independence and Resolution Adopted by the Turkish Cypriot Parliament on 15 November 1983, para. 22 (b).

17/ United States courts have consistently ruled that whether a government should be recognized is a political question whose determination is within the exclusive prerogative of the Executive branch. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 410 (1964); National City Bank of New York v. Republic of China, 348 U.S. 356, 358 (1955). See Restatement No. 204 ("Under the Constitution of the United States, the President has exclusive authority to recognize or not to recognize a foreign state or government, and to maintain or not to maintain diplomatic relations with a foreign government.").

International legal scholars likewise agree that recognition is a political act. See, e.g., B. Jankovic, Public International Law 100 (1984) (translation from the 5th Serbocroation edition by M. and B. Milosavljevic) ("It is obvious that in granting individual recognition states are motivated by their own political interests, and that recognition is basically a political act."); I. Brownlie, Principles of International Law 94 (3d ed. 1979) ("Recognition, as a public act of state, is an optional and political act and there is no legal duty in this regard."); Akehurst, A Modern Introduction to International Law 63 (3d ed. 1977); G. von Glahn, Law Among Nations 91 (3d ed. 1976); J. Brierly, Law of Nations 140 (6th ed., Waldock, 1963).

18/ See J. Brierly, supra note 16, p. 147 ("the recognizing state is not concerned with the question whether the state of things which it is recognizing is legal by the national law of another state"); id. pp. 148-49 ("On the declaratory view of the nature of recognition its granting or withholding does not, so far as international law is concerned, affect the status in law of the state or government to which it is accorded or from which it is withheld.").

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19/ Recognition of a State and recognition of a particular governmental régime are two different things. See I. Brownlie, Principles of Public International Law 95 (3rd ed. 1979) ("Non-recognition of a particular régime is not necessarily a determination that the state represented by that régime does not qualify for statehood."); Restatement No. 203, comment a (while a state cannot recognize a régime as a government without thereby accepting the statehood of the entity which the régime claims to be governing, "[a] state can, however, recognize or treat an entity as a state while denying that a particular régime is its government"). It follows therefore that a state may derecognize a régime as the government of another state without derecognizing the state it governs and without formally recognizing any other government. Restatement No. 203, comment f.

20/ See Montevideo Convention on the Rights and Duties of States, 26 December 1933, 165 League of Nations Treaty Series 19; Restatement No. 201 and comments a-e; I. Brownlie, supra note 16, pp. 74-75.

21/ Restatement No. 202. See also J. Crawford, The Creation of States in International Law 23 (1979) ("... in principle the denial of recognition to an entity which otherwise qualifies as a State cannot entitle the nonrecognizing States to act as if the entity in question was not a State."); J. Brierly, Law of Nations 139 (6th ed., Waldock, 1963) ("A state may exist without being recognized, and if it does exist in fact, then, whether or not it has been formally recognized by other states, it has a right to be treated by them as a state.").

22/ The Turkish Cypriot community has established a republican government exercising control over the northern third of the island of Cyprus. Although Turkish troops remain on Cypriot soil, the continuing presence of troops from a friendly state for the purpose of preserving the rights of the Turkish Cypriot people under the 1960 treaties is in no way inconsistent with statehood. The fact that the Turkish intervention was made pursuant to the terms of the 1960 treaties makes the case even stronger.

23/ "In most instances, the issue [whether a state should not be recognized because it acquired the attributes of statehood through the threat or use of force in violation of the United Nations Charter] is not subject to authoritative determination" and states, "particularly after a lapse of time, have been willing to accept a fait accompli." Restatement No. 202, Reporter's Note 5. For example, the international community was divided in its opinion on the legality of India's intervention in Bangladesh, but states have generally recognized Bangladesh as a state and Bangladesh has been admitted to the United Nations. Id. See infra, text accompanying note 24. Similarly, Brierly has stated that "[w]hether or not a new state has actually begun to exist is a pure question of fact; and as international law does not provide any machinery for an authoritative declaration on this question, it is one which every other state must answer for itself as best it can." J. Brierly, supra note 16, p. 137.

24/ See, for example, the following documents: United Nations General Assembly resolution 3212 (XXIX) (1976) (considering the "constitutional system of

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the Republic of Cyprus [to concern] the Greek Cypriot and Turkish Cypriot communities," commending "the contacts and negotiations taking place on an equal footing ... between the representatives of the two communities and call[ing] for their continuation"); United Nations Security Council resolution 649 (1990) (calling on the leaders of the two communities "to reach freely a mutually acceptable solution" and "to co-operate, on an equal footing, with the Secretary-General in completing" an outline of such a solution); General Assembly resolution 34/30 (1979) (calling for the resumption of the negotiations "between the representatives of the two communities, to be conducted freely on an equal footing"); General Assembly resolution 3395 (XXX) (1975) (same). See also "Opening statement delivered by the Secretary-General on Monday, 26 February 1990, at 12.15 p.m.", in report of the Secretary-General on His Mission of Good Offices in Cyprus (S/21183, annex 1) (8 March 1990) ("The mandate given to me by the Security Council makes it clear that my mission of good offices is with the two communities. My mandate is also explicit that the participation of the two communities in this process is on an equal footing. The solution that is being sought is thus one that must be decided upon by, and must be acceptable to, both communities.").

25/ See the following documents: Four Guidelines of 12 February 1977 (See S/12323) (declaring the goal of a bi-communal Federal Republic and recognizing that the two communities will administer different territories); Ten-Point Agreement of 19 May 1979 (See A/34/620 and Corr.1, annex V, para. 2) (reaffirming the 1977 Guidelines).

26/ United Nations Security Council resolution 649 (1990) (calling for a solution "providing for the establishment of a federation that will be bi-communal as regards the constitutional aspects and bi-zonal as regards the territorial aspects in line with the present resolution and the[] 1977 and 1979 high-level agreements").

27/ The Vienna Convention on the Law of Treaties provides that treaties can be terminated by mutual consent of the parties. Vienna Convention on the Law of Treaties, 23 May 1969, art. 54, 1155 United Nations Treaty Series 331 (1969) ("The termination of a treaty or the withdrawal of a party may take place: ... (b) at any time by consent of all the parties after consultation with the other contracting States.").

At some point in the future, however, it may become apparent that no agreement on a successor régime can be reached and that further negotiations would be futile. Should this ever be the case, the only workable solution - one which international law would not, at that point, forbid - might be partition of the island, a solution considered by the British Colonial Secretary in 1956. See discussion supra, note 4.

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Agenda item 47
QUESTION OF CYPRUS

SECURITY COUNCIL
Forty-fifth year

Letter dated 7 August 1990 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

I have the honour to submit, enclosed herewith, a letter addressed to you by His Excellency Mr. Özer Koray, Representative of the Turkish Republic of Northern Cyprus, to which is attached the text of a paper entitled "Turkish Republic of Northern Cyprus - the Status of the Two Communities in Cyprus" (see annex).

I would be grateful if my letter and its annex were circulated as a document of the forty-fourth session of the General Assembly, under agenda item 47, and of the Security Council.

(Signed) Mustafa AKSIN
Ambassador
Permanent Representative

ANNEX

Letter dated 7 August 1990 from Mr. Özer Koray to the Secretary-General

Upon instructions from my Government, I have the honour to enclose herewith the text of an opinion paper entitled "Turkish Republic of Northern Cyprus - the Status of the Two Communities in Cyprus" written by eminent law Professor Mr. E. Lauterpacht, CBE, QC, dated 10 July 1990 (see attachment).

(Signed) Özer KORAY

Attachment

TURKISH REPUBLIC OF NORTHERN CYPRUS

THE STATUS OF THE TWO COMMUNITIES IN CYPRUS

Opinion of Mr. E. Lauterpacht, CBE, QC

1. This Opinion deals with two related questions. One is the status of the two communities, Greek and Turkish, in Cyprus, in relation to the settlement of the Cyprus question. The other is the interpretation and significance of Security Council resolutions 541 (1983) and 550 (1984), both of which purported to pronounce unlawful and invalid the 1983 Declaration of Independence of the Turkish Republic of Northern Cyprus ("the TRNC") and called upon States not to recognize the TRNC.

2. In summary, the Opinion reaches the following conclusions:

Part I (paras. 3-32)

On the basis of an examination of the treaties and other instruments, including the Cyprus Constitution, concluded in 1959 and 1960, and of the resolutions of the Security Council and General Assembly, as well as of statements by the Secretary-General of the United Nations, it can properly be said that the Turkish Cypriot Community possesses the same political status as the Greek Cypriot Community, that the two communities participate in the negotiations for the settlement of the Cyprus question on an equal footing and that, it follows, the Greek Cypriot Community should not enjoy any privileged position in the negotiations, whether on matters of substance or of procedure, by reason of the fact that it presents itself as the Government of the Republic of Cyprus.

Part II (paras. 33-53)

(a) Resolutions 541 (1983) and 550 (1984) of the Security Council in so far, in particular, as they purport to treat the 1983 declaration by the TRNC of its independent statehood as incompatible with the 1960 Treaties of Establishment and Guarantee and as being legally invalid, and to call upon States not to recognize the TRNC, are legally not soundly based.

(b) The Security Council itself defined its concern with the affairs of the Republic of Cyprus in terms of the 1960 Constitution and of the Treaties of Establishment and of Guarantee concluded at the same time. The resolutions in effect purported to express legal conclusions based upon what must presumably have appeared to the Security Council at the time to be valid legal considerations. But because, as a matter of fact, the action of the Turkish Cypriot community clearly flowed from and was a reaction to the prior conduct of the Greek Cypriot community, and because the Greek Cypriot community owed duties to the Republic of Cyprus and to the Turkish Cypriot community no less than the latter did to the former, as a matter of law, no judgement could properly be passed by the Security Council upon the conduct of one side without at the same time passing judgement on the conduct of the other.

(c) The Security Council did not adopt this even-handed approach. Instead it dealt with the action of the Turkish Cypriot community in isolation. If it had assessed the situation as a whole, it could not possibly have concluded that the conduct of the Turkish Cypriot community violated the controlling legal instruments while the conduct of the Greek Cypriot community did not. Nor could it have reached any other conclusion than that the action of the Greek Cypriot community justified the conduct of the Turkish Cypriot community.

(d) The resolutions of the Security Council were, therefore, tainted by such a degree of selectivity and incompleteness as to render them arbitrary and discriminatory, and thus not well founded in law. It follows that the call to States not to recognize the TRNC was not legally justified. The action of the Security Council in this case was quite different to its action in relation to Rhodesia and the African bantustans where there were no controlling treaties. Accordingly, pending the settlement of the Cyprus question by negotiations between the two communities, the Security Council's call for non-recognition of the TRNC should not be maintained.

(e) It is wrong for the Security Council to express legal opinions more suited to a judicial than a political body. The Security Council does not adhere to judicial forms and cannot in the course of a debate on any situation probe the legal issues with the thoroughness and fairness of a judicial body. Its decisions should not, therefore, extend beyond the prescription of specific action aimed at maintaining or restoring international peace.

PART I. THE STATUS OF THE CYPRIOT COMMUNITIES IN THE CONTEXT OF THE SETTLEMENT OF THE CYPRUS QUESTION

3. The position of the Greek and Turkish parties in Cyprus in relation to the settlement of the Cyprus question is really quite straightforward. The two parties are separate communities of equal standing in the negotiations, each exercising its right to determine its own future and neither being subordinate to the other in any material respect. The disparity in numbers between them does not affect their equality of status in relation to the settlement of the Cyprus problem.

4. The positions of the communities thus described derives from a number of basic texts and is uniformly reflected in statements of the guarantor Powers, Greece, Turkey and the United Kingdom of Great Britain and Northern Ireland, and in acts of the United Nations, whether in the form of resolutions of the Security Council and the General Assembly or in statements of the Secretary-General.

The basic texts

1. Prior to the independence of Cyprus

5. An early acknowledgement of the status of the two communities - and a particularly significant one as emanating from the Colonial Secretary of Britain, at that time the country responsible for the governance of Cyprus - is to be found

in the statement of Mr. Lennox Boyd made in the House of Commons on 19 December 1956:

> "... it will be the purpose of Her Majesty's Government to ensure that any exercise of self-determination should be effected in such a manner that the Turkish Cypriot community, no less than the Greek Cypriot community shall, in the special circumstances of Cyprus, be given freedom to decide for themselves their future status. In other words, Her Majesty's Government recognize that the exercise of self-determination in such a mixed population must include partition among the eventual options."

This statement was confirmed by the Prime Minister, Mr. Macmillan, on 26 June 1958, when he also described the Colonial Secretary's assurances as "pledges".

6. This identification of the essential parties to the Cyprus situation and of their basic parity was carried through into the negotiations leading up to the independence of Cyprus. The Memorandum setting out the Agreed Foundation for the Final Settlement of the Problem of Cyprus, signed in London on 19 February 1959, took note "of the Declaration by the Representative of the Greek-Cypriot community and the representative of the Turkish Cypriot community that they accept the documents annexed to this Memorandum as the agreed foundation for the final settlement of the problem of Cyprus". 1/

7. The Zurich Accord, on which the London Agreement was based, incorporated the concept of the two communities in the first paragraph of the document setting out "Basic Structure of the Republic of Cyprus". This provided that:

> "The State of Cyprus shall be a Republic with a presidential régime, the President being Greek and the Vice-President Turkish elected by universal suffrage by the Greek and Turkish communities of the Island respectively."

The attribution to the Greek Cypriot community of the Presidency and to the Turkish Cypriot community of the Vice-Presidency was an understandable reflection of the greater numerical size of the Greek Cypriot community. But it contained no statement or acknowledgement of any superior constitutional status for the Greek Cypriot Community. Indeed, the "Basic Structure" is replete with provisions specifically assuring the respective rights of each of the two communities and providing for checks and balances to assure the rights of each, for example, it specifies a Council of Ministers composed of seven Greek Ministers and three Turkish Ministers, it vests executive authority in the President and Vice-President and grants them each a right of veto over decisions of the Council of Ministers and laws and decisions of the House of Representatives, in laying down that the House of Representatives should be elected in the proportion of 70 per cent for the Greek community and 30 per cent for the Turkish community, in the establishment of Communal Chambers for each community, in the specification that the Civil Service should also be composed as to 70 per cent of Greeks and as to 30 per cent of Turks, and so on.

2. The Cyprus Constitution of 1960

8. All the features of the Basic Structure were immediately implemented in many Articles of the Constitution of Cyprus, notably Articles 1, 2, 46-51, 57, 59, 60, 62, 67, 72, 73, 77, 86-111, 123, 125, 133, 153, 159, 171 and 173. Moreover, Article 182 provided that the Basic Articles of the Constitution (which were listed in Annex III and by and large are those listed above) could not in any way be amended. Article 185 provided that the territory of the Republic is "one and indivisible". It also excluded "the integral or partial union of Cyprus with any other State or the separatist independence". This provision was intended to prevent any Enosis or union with Greece by the Greek Cypriots and any union with Turkey by the Turkish Cypriots.

3. The internationalization of the Constitution: the Treaties of Establishment and Guarantee

9. These fundamental elements of the Cyprus Constitution were lifted onto the plane of international law by treaties contemporaneously concluded between Cyprus, Greece, Turkey and the United Kingdom. The Treaty of Establishment defined the territory of the Republic of Cyprus and contained a Preamble expressing the commitment of all the Parties to the maintenance of the status of the two communities by declaring their desire "to make provision to give effect to the Declarations" made by, inter alia, "the Representative of the Greek Cypriot Community and by the Representative of the Turkish Cypriot Community". It also contained - in a manner binding all parties - acknowledgement of the entitlement of the United Kingdom to retain the so-called "Sovereign Base Areas".

10. Even more direct and explicit in its terms was the Treaty of Guarantee, the parties to which were the Republic of Cyprus of the one part and Greece, Turkey and the United Kingdom of the other part. In the Preamble they

- stated

> "that the recognition and maintenance of the independence, territorial integrity and security of the Republic of Cyprus, as established and regulated by the Basic Articles of its Constitution, are in their common interest" (emphasis supplied) and

- expressed their desire

> "to co-operate to ensure respect for the state of affairs created by that Constitution".

11. The operative part contained three articles of dominant importance.

12. In the first, the Republic of Cyprus undertook to ensure the maintenance of "respect for its Constitution" as well as not to participate in any political or economic union with any State. (Art. 1)

13. In the second, Greece, Turkey and the United Kingdom, after noting the undertakings of the Republic of Cyprus, recognized and guaranteed "the state of affairs established by the Basic Articles of its [of Cyprus] Constitution" (Art. 2)

14. In the third, Greece, Turkey and the United Kingdom undertook that, in the event of a breach of the provisions of the Treaty, they would consult together.

> "In so far as common or concerted action may not prove possible, each of the three guaranteeing Powers reserves the right to take action with the sole aim of re-establishing the state of affairs created by the present Treaty." (Art. 4)

15. In addition, Cyprus, Greece and Turkey undertook to respect the integrity of the British Sovereign Base Areas and to guarantee the use and enjoyment by the United Kingdom of its rights therein. 2/

16. Thus, an essential and inescapable ingredient of the coming into being of the Republic of Cyprus was the concept of the balanced and guaranteed participation of both communities, Turkish no less than Greek, in every basic aspect of the Government of Cyprus. The exclusion from the governmental process of Cyprus of one or the other of the communities would mean that the Government so functioning would not be the Government of the Republic of Cyprus as contemplated and established by the international settlement and treaties concluded in 1960. Any such limping Government would lack constitutional legitimacy and, in so far as it claimed to represent the Republic of Cyprus, would as a matter of international law be in breach of the fundamental undertakings on the international plane given by the Republic in the 1960 Treaties regarding the bi-communal character of the Republic and its Government.

4. Recognition by the United Nations of the equal status of the Greek and Turkish Cypriot communities

17. With the one exception that will be examined more closely in part II of this Opinion (para. 33 and following), the practice of the United Nations has been strikingly uniform in its acknowledgement that the Cyprus problem involves the two communities and that in this involvement they stand on a footing of equality. This practice takes the form of resolutions of the Security Council and of the General Assembly, and of reports of the Secretary-General.

18. At the time of its first consideration of the problem in 1964 the Security Council noted the special position of the communities. In its resolution of 4 March 1964, the Security Council called upon "the communities in Cyprus and their leaders to act with the utmost restraint" and recommended that the Secretary-General should appoint a mediator who should use his best endeavours "with the representatives of the communities" to promote a settlement (S/5575). 3/

19. The acceptance by the Security Council of the primacy of the Constitution of Cyprus in the resolution of the problem and, therefore, of the entitlement of the Turkish Cypriot community to full participation in the government of Cyprus, is shown in the Security Council's resolution 353 (1974) of 20 July 1974, following

upon the Greek coup of 15 July 1974 and the intervention by Turkey in the exercise of its rights as a guarantor of the 1960 settlement. There, the preamble declared the concern of the Council "about the necessity to restore the constitutional structure of the Republic of Cyprus, established and guaranteed by international agreements". It may be noted, parenthetically, that that concern was reiterated 10 days later in the Geneva Declaration issued by the Foreign Ministers of Greece, Turkey and the United Kingdom when they urged that "negotiations should be carried on to secure the restoration of peace in the area and the re-establishment of constitutional government in Cyprus". The Foreign Ministers also acknowledged the status of the communities by agreeing "that representatives of the Greek Cypriot and Turkish Cypriot Communities should, at an early stage, participate in the talks relating to the Constitution", including the question "of an immediate return to constitutional legitimacy". Lastly, they "noted the existence in practice in the Republic of Cyprus of two autonomous administrations, that of the Greek Cypriot community and that of the Turkish Cypriot community".

20. On 30 August 1974, the Security Council again acknowledged the role of the two communities by expressing its appreciation to the Secretary-General for the part he played in bringing about talks between the leaders of the two communities (resolution 361 (1974)).

21. Later in the same year, the General Assembly entered the picture by adopting a resolution that, among other things, stated that it "considers that the constitutional system of the Republic of Cyprus concerns the Greek Cypriot and Turkish Cypriot communities" and "commends the contact and negotiations taking place on an equal footing, with the good offices of the Secretary-General, between the representatives of the two communities, and calls for their continuation with a view to reaching freely a mutually acceptable political settlement, based on their fundamental and legitimate rights" (General Assembly resolution 3212 (XXIX) of 1 November 1974). This resolution was endorsed by the Security Council in resolution 365 (1974) of 13 December 1974.

22. On 13 February 1975, the Turkish Cypriot community proclaimed the Turkish Federated State of Cyprus ("TFSC"). According to the Introduction to the text of the Constitution of the TFSC published on 1 July 1975 the Turkish Cypriots had by February 1975 found that, having regard to developments since 1963,

> "it was absolutely necessary for the Turkish Cypriot Community to make a fundamental re-organization of its internal structure in the light of the large region which it had to administer".

The Security Council expressed "regret" at this development

> "as, inter alia, tending to compromise the continuation of negotiations between the representatives of the two communities on an equal footing" (resolution 367 (1975), para. 2).

There is, of course, an inherent contradiction in the resolution in so far as, on the one hand, it stresses negotiations between the communities "on an equal footing" and, on the other, it regrets the assertion by the Turkish Cypriot

community of the quality of statehood that evinced the entitlement and need of that community to possess equal standing as a State with the Greek Cypriot community. But in any event, it is sufficient to note the continuing identification by the Security Council of the role of the two communities on an equal footing.

23. Throughout this period the approach of the Secretary-General to the two sides in the dispute had consistently been on the basis that the talks were between the two communities, not between the Republic of Cyprus and some secessionist body. His approach is reflected in his interim report on discussions regarding the powers and functions of a federal government. This was expressed in terms of his having "met ... with the representatives of the Greek Cypriot and Turkish Cypriot communities" (United Nations document S/11789 of 5 August 1975). Also, in his report of 8 December 1975 (S/11900 and Add.1) the Secretary-General expressed the view that in the then circumstances the best available means of making progress towards a settlement "is through continued talks between the representatives of the two communities".

24. This view was echoed in General Assembly resolution 3395 (XXX) of 20 November 1975, when the Assembly called

> "for the immediate resumption in a meaningful and constructive manner of the negotiations between the representatives of the two communities, under the auspices of the Secretary-General, to be conducted freely on an equal footing with a view to reaching a mutually acceptable agreement based on their fundamental and legitimate rights".

For its part, the Security Council endorsed this wording by repeating it in the preambles to resolutions 391 (1976), 401 (1976) and 410 (1977).

25. In the formal outcome of the ensuing discussions between the two communities there was no departure from the concept of negotiation on an equal footing. The "High-Level Agreement" of 12 February 1977 between President Makarios and President Denktas declared that "we are seeking an independent, non-aligned, bi-communal Federal Republic". Bi-zonality was also accepted: "the territory under the administration of each community should be discussed ..."

26. Later in the same year the Security Council again called upon "the representatives of the two communities" to resume negotiations (resolution 414 (1977) of 15 September 1977), as did the General Assembly in the by now well-hallowed phrase "negotiations between the representatives of the two communities, to be conducted freely on an equal footing" (resolution 32/15 of 9 November 1977).

27. The next High-Level Agreement (the so-called "10-Point Agreement") of 19 May 1979 between President Denktas and President Kyprianou in no way departed from this approach. Even though the Agreement did not restate the approach expressly, it accepted it impliedly. This Agreement was referred to in General Assembly resolution 34/30 of 20 November 1979 when "the representatives of the two communities" were called on to resume negotiations "on an equal footing". Similar wording also appeared in General Assembly resolution 37/253 of 13 May 1983.

28. There began in December 1981 a series of Security Council resolutions which, in renewing the mandate of UNFICYP (as many resolutions had previously done) also noted that "the parties have resumed their intercommunal talks". (See resolutions 495 (1981), 510 (1982), 526 (1982) and 534 (1983).)

29. In short, for the period ending in November 1983 (when the Turkish Cypriot community declared the establishment of the TRNC), there is a clear pattern of acknowledgement by the United Nations of the separate status of the two communities in Cyprus, of the requirement that they should negotiate on "an equal footing" and that the eventual solution should take the form of a unified state, albeit bi-zonal in character.

30. As this exposition of the position of the United Nations regarding the status of the Cypriot communities has so far been presented in chronological order, it might be expected that the next item for mention would be the developments in the United Nations following, and related to, the declaration of the independence of the TRNC on 15 November 1983. However, this event occasioned the adoption of views in the United Nations which, upon closer scrutiny, appear not to be fully consistent with the main trend of United Nations emphasis upon the separate but equal status of the two communities. For this reason, it will be convenient briefly to postpone the treatment of that episode to part II of this Opinion.

31. The remainder of what needs to be said about the approach of the United Nations to the status of the two communities is brief. In general, not only has the United Nations not departed from the pattern established before 1983; it has in fact reiterated its emphasis upon the equal status of the two communities. Thus, in the Secretary-General's "Talking points" as delivered at his Vienna meeting with the representatives of the two sides on 6 and 7 August 1984, he said (emphasis supplied):

> "As regards the establishment of a central government for the federal republic, it will be politically imperative to find a proper balance between the <u>equal political status of the two communities</u>, the unity of the country, and the functional requirements of a government capable of fulfilling effectively the powers assigned to it."

This approach has marked all the Secretary-General's contributions since that date including, for example, the "Draft Framework Agreement on Cyprus" presented by him on 29 March 1986. Again, in his opening statement at the meeting held in New York in February 1990, he said:

> "Cyprus is the common home of the Greek Cypriot community and of the Turkish Cypriot community. Their relationship is not one of majority and minority, but one of two communities in the state of Cyprus. The mandate given to me by the Security Council makes it clear that my mission of good offices is with the two communities. My mandate is also explicit that the participation of the two communities in this process is on an equal footing." (S/21183, p. 7)

Later in the statement the Secretary-General also said:

> "The political equality of the two communities in and the bi-communal nature of the federation need to be acknowledged. While political equality does not mean equal numerical participation in all federal government branches and administration, it should be reflected inter alia in various ways: ... and in the equality and identical powers and functions of the two federated states." (ibid.)

32. Most recently, the Security Council, in its resolution of 12 March 1990 (649 (1990)) called upon

> "the leaders of the two communities to pursue their efforts to reach freely a mutually acceptable solution providing for the establishment of a federation that will be bi-communal as regards the constitutional aspects and bi-zonal as regards the territorial aspects in line with the present resolution and their 1977 and 1979 high-level agreements, and to co-operate, on an equal footing, with the Secretary-General in completing, in the first instance and on an urgent basis, an outline of an overall agreement, as agreed in June 1989".

PART II. THE ESTABLISHMENT OF THE TRNC AND SECURITY COUNCIL RESOLUTIONS 541 (1983) AND 550 (1986)

33. On 15 November 1983 the establishment of the TRNC as an independent State was declared by the Turkish Cypriot people. This took a step further the process of separate political identification of the Turkish Cypriot community that had been initiated on 13 February 1975 by the proclamation of the TFSC. The difference now was that, whereas the TFSC was essentially a restructuring "of the autonomous Turkish Cypriot administration" (see the statement of Mr. Denktas issued on 13 February 1975) that had come into being in the period since the subversion of the Constitution by the Greek Cypriots in December 1963, and made no formal claim to independence, the TRNC was declared to be an independent State.

34. The reaction of the Security Council was expressed on two occasions. The first was in resolution 541 (1983) of 18 November 1983. The Security Council stated its "concern" at the Declaration, "considered" that the Declaration was "incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee", "deplored ... the purported secession of part of the Republic of Cyprus" and concluded that the Declaration was "legally invalid", called for its withdrawal and called upon all States not to recognize any Cypriot State other than the Republic of Cyprus.

35. The second Security Council resolution, adopted six months later on 11 May 1984, was resolution 550 (1984). After declaring in its preambular part the concern of the Security Council at the "further secessionist acts" it

> "condemns all secessionist actions, including the purported exchange of ambassadors between Turkey and the Turkish Cypriot leadership, declares them illegal and invalid and calls for their immediate withdrawal".

The Security Council also reiterated its call to all States not to recognize "the purported State" of the TRNC.

36. It is evident that the position of the Security Council in relation to the TRNC is predicated upon the Council's assessment of the legal position. This was declared in the resolutions in two important legal findings which are essentially as follows:

- the 1983 Declaration of the TRNC "is incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee"; and

- the creation of the TRNC is "legally invalid".

Each of these propositions calls for closer scrutiny.

1. The proposition that the establishment of the TRNC "is incompatible with the 1960 Treaty concerning the establishment of Cyprus and the 1960 Treaty of Guarantee"

(a) "The 1960 Treaty concerning the establishment of Cyprus"

37. This is, presumably, to be taken as a reference to the treaty that is generally known as "the Treaty of Establishment". To the extent that this Treaty can be said to be binding upon the Turkish Cypriot community (since, given the denial by the Security Council of the existence of the TRNC, the Treaty clearly cannot be binding on the latter entity), this must derive from the preambular provision in which the stated parties (the United Kingdom, Greece, Turkey and the Republic of Cyprus) express their desire

> "to make provisions to give effect to the ... Declarations made at the [London] Conference ... by the Representative of the Greek Cypriot Community and by the Representative of the Turkish Cypriot Community". 4/

The operative points of these declarations were that each representative

> "accepts the documents and declarations as the agreed foundation for the final settlement of the problem of Cyprus".

The principal item in the "documents and declarations" there referred to included the "Basic Structure of the Republic of Cyprus" (already referred to, see above, para. 7), all the elements of which were carried through into the Cyprus Constitution of 1960. The absolutely fundamental feature of this Structure was the joint participation in the Government of Cyprus of both the Greek and the Turkish Cypriot communities in the precise, detailed and, above all, balanced manner set out in those documents. Now, while it is obviously true that the 1983 proclamation of the existence of the TRNC as an independent State is incompatible with that structure, it is (and, equally, was at the time of the adoption of the Security Council resolutions 541 (1983) and 550 (1984)) absurd to disregard the undoubted fact that the dominant and controlling features of the Basic Structure and the

Constitution had been inoperative for a score of years, since the time (in 1963-1964) when the Greek Cypriot community had effectively excluded the Turkish Cypriot community from the scheme of power-sharing established by the Basic Structure and the Constitution.

38. This is not to say that the 1960 Treaty of Establishment was no longer in force in 1983. It is only to say that if the Security Council attached importance to the idea of compatibility of the conduct of the Turkish Cypriot community with the Treaty, it should have attached the same importance to the compatibility with that Treaty of the conduct of the Greek Cypriot community. By failing to do so, the Security Council not only signally failed to apply in an objective and even-handed manner the substantive legal requirements to which it had itself made reference; it also failed to adhere to the standard of equal treatment that it had repeatedly affirmed in its use, in relation to the negotiations between the two sides, of the words "on an equal footing".

39. In short, if the Security Council had taken a whole (as opposed to an incomplete) view of the situation in 1983, it should not have found that the TRNC Declaration was "incompatible" with the 1960 Treaty of Establishment without also having found that the conduct of the Greek Cypriot community had for the previous 20 years been "incompatible" with the 1960 settlement and, moreover, that it was that conduct of the Greek Cypriot community that had led directly to the reaction of the Turkish Cypriot community. There can be no legal basis for holding one party to the terms of an agreement without predicating the requirement of an equal degree of compliance by the other. There should be recalled in this connection the statement by the International Court of Justice in the Namibia Advisory Opinion (ICJ Reports 1971, at p. 46) of what it termed "one of the fundamental principles" governing the international relationship involved there:

> "... a party which disowns or does not fulfil its own obligations cannot be recognized as retaining the rights which it claims to derive from the relationship".

That statement is equally applicable to the Cyprus situation.

40. The failure of the Security Council to conform to these basic and controlling legal considerations undermines comprehensively the rationality and persuasiveness of its resolutions and, hence, the legal worth of those resolutions. The fact that seven years have passed since the adoption of those resolutions cannot serve to validate the unsound legal approach then adopted. There is nothing to prevent the Security Council from now endeavouring to put matters right by seeking to match the approach adopted in these two resolutions to the undoubted historical facts; indeed every legal consideration militates in favour of the adoption by the Security Council of a more principled position that would make a positive contribution to the settlement of the question, namely, the retraction of its denial of the legality and validity of the action of the Turkish Cypriot community and of its call to refrain from recognition of the TRNC. 5/

(b) "The 1960 Treaty of Guarantee"

41. Security Council resolution 541 (1983) also refers to the incompatibility of the Turkish Cypriot action with the 1960 Treaty of Guarantee. All the observations made above regarding the 1960 Treaty of Establishment are equally applicable to this Treaty. In addition, however, it is appropriate to note that this Treaty, even more expressly than the Treaty of Establishment, gives international standing to the Basic Structure and the Constitution of 1960. Thus, in the Preamble, the Parties state the consideration

> "that the recognition and maintenance of the independence, territorial integrity and security of the Republic of Cyprus, as established and regulated by the Basic Articles of its Constitution, are in their common interest".

The reason for giving emphasis in the phrase just quoted to the words "as established and regulated by the Basic Articles of its Constitution" is that the effect of these words is to define that "Republic of Cyprus" of which the independence and territorial integrity is to be recognized and maintained. In terms of the Treaty of Guarantee, a Cyprus that is not regulated by the Basic Articles of its Constitution is not "the Republic of Cyprus" at all and it follows that the assertion of the independence of the TRNC cannot be an unlawful secession.

42. Reference must also be made to Article 1 of the same Treaty:

> "The Republic of Cyprus undertakes to ensure the maintenance of its independence, territorial integrity and security, as well as respect for its Constitution.
>
> It undertakes not to participate, in whole or in part, in any political or economic union with any State whatsoever. It accordingly declares prohibited any activity likely to promote, directly or indirectly, either union with any other State or partition of the Island."

43. The Security Council has evidently taken the view that this Treaty is directly binding upon the Turkish Cypriot community, otherwise the Security Council could not have deemed the 1983 Declaration of the TRNC to be "incompatible" with that Treaty. But if that is the case and if the Treaty is binding on the Turkish Cypriot community, it must be at least as binding on the Greek Cypriot community, if not more so, because it is that community which is holding itself out to be "the Republic of Cyprus".

44. The Security Council was, therefore, in error in failing to apply the terms of the Treaty of Guarantee equally to both communities. It is, in the historical circumstances of the situation, impossible to attribute a responsibility to the Turkish Cypriot community for conduct said to be "incompatible" with the Treaty of Guarantee without, at the same time, assessing the relevance to the situation of the conduct of the Greek Cypriot community and, in particular, its deliberate disregard of the terms of the Cyprus Constitution throughout the period of 20 years preceding the establishment of the TRNC.

2. The proposition that the 1983 Declaration of the TRNC is "legally invalid"

45. The express statement by the Security Council, both in paragraph 2 of resolution 541 (1983) and in paragraph 2 of resolution 550 (1984) that the 1983 Declaration is "legally invalid" requires consideration of the question: by reference to what law is this legal invalidity to be determined? There are only two possibilities: one is the constitutional law of Cyprus; the other is international law.

46. As regards the constitutional law of Cyprus, it will be clear that no assessment of the legal validity of the conduct of the Turkish Cypriot community can be carried out without a comparable consideration of the legal validity of the conduct of the Greek Cypriot community. The two legal situations are necessarily interconnected. Any assessment of the one without a corresponding assessment of the other is, therefore, bound to be inherently flawed. But more than that, as already stated, any consideration of the one without consideration of the other contradicts the policy reflected in the Security Council's own declared position that the parties must negotiate "on an equal footing" - an approach which logically carries with it the principle, necessarily part of any lawyer's approach to the consideration of an issue between two parties, that both must be treated with perfect equality.

47. There may, of course, be some who attach special weight to the fact that the Greek Cypriots are in a numerical majority in Cyprus. That consideration may be relevant to the political act of distributing power and positions within the Constitution. This is shown by the fact that, for example, the 1960 Constitution provides that the Council of Ministers shall be composed of seven Greek Ministers and three Turkish Ministers (Art. 46) and that 70 per cent of the members of the House of Representatives shall be elected by the Greek community and 30 per cent by the Turkish community. But inequality of numbers cannot generate inequality of obligation. The fact that one community may constitutionally be entitled to more Ministers or more representatives than the other does not mean there is some corresponding entitlement the more freely to reject the duty of compliance with an agreed Constitution. The numerical majority of the Greek community cannot be invoked to justify fundamental departures from the Constitution by that community while insistence is still placed on conformity by the Turkish community with its obligations under the same instrument.

48. In so far as the "illegality" of the TRNC action is thought to derive from international law, the consideration already given above to the relevance and operation of the 1960 Treaties should be sufficient to dispose of that point.

49. The possibility remains, however, that some may see in the references to national unity and territorial integrity in the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 1960), and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) of 24 October 1970), a reason for characterizing the TRNC declaration as illegal. No doubt these prescriptions are of general importance, but the fact of their

generality must be emphasized. In contrast, the present situation is very specific - especially in the relevance to it of the 1960 Treaties and the Basic Structure and 1960 Constitution which are endorsed and guaranteed in those Treaties. It is axiomatic and beyond discussion that treaties override customary international law. The general terms of the Declarations on colonialism and on principles of international law - which at best are no more than customary international law - must give way to the explicit and clear requirements of the relevant treaties.

50. This same consideration bears with special weight on any supposed similarity between the present case and the other episodes in which the Security Council has called upon States not to recognize certain secessionist or new entities. Such action was taken indirectly over Katanga and expressly over Rhodesia and the African "bantustans". But they are totally distinguishable from the present situation. The principal point of distinction is that they were not affected by any controlling treaty - in contrast with the role here of the 1960 Treaties of Establishment and of Guarantee. A second point of distinction is that in the last two of those cases the inhibition on recognition derived from the fact that the establishment of the entity involved a continuance, in one or another form, of the concept of colonialism. That certainly is not true of the claim to independence by the Turkish Cypriot community.

51. The truth of the matter is that in determining that the establishment of the TRNC was illegal and invalid, and in attaching to that determination the sanction that States should not recognize the TRNC, the Security Council was evidently purporting to act in a judicial capacity. That is the only proper description of the conduct of anyone or any body that claims the right to make findings of "illegality" or "invalidity". Yet in so acting the Security Council did not behave in the manner appropriate to the performance of a judicial function. True, it heard both sides, in the sense that it heard speeches from President Denktas as well as from the representative of the Greek Cypriot community. But having regard to the range and complexity of the issues upon which it ventured directly or indirectly to make a finding, namely, the conformity with the 1960 Constitution of the conduct of the two communities, its scrutiny of the situation was at best superficial. The judgement, in the form of a draft resolution, was prepared and was in circulation before the debate even took place - an order of proceeding that is in no way compatible with the judicial process of ascertaining facts and weighing arguments before reaching a reasoned conclusion.

52. It must, of course, be acknowledged that the Security Council is not organized or intended to act as a judicial body. But in that case, it should be recognized that the conduct of the Security Council should stop short of passing judgement upon legal issues. Decisions of the Security Council should be limited to prescribing a course of action directed towards eliminating the situation that amounts to a threat to the peace, a breach of the peace or an act of aggression. That prescription should be founded on the primary responsibility of the Security Council to maintain international peace and security. If threshold determinations of law are necessarily involved, they should only be expressed if they can be subjected to proper judicial review. Even though this view of the matter is not one that has commended itself to the Security Council over the years, the validity

of these considerations is such that it is proper to draw attention to them in the hope that, at least in this case, the injustice that flows from this practice may be remedied.

Notes

1/ Declarations to this effect were signed by Dr. Kutchuk (representing the Turkish Cypriot community) and Archbishop Makarios (representing the Greek Cypriot community) on the same day.

2/ This obligation has particular relevance to the apprehension expressed in some quarters in the United Kingdom regarding the possible effect that recognition by the United Kingdom of the TRNC might have upon the British position in the sovereign base areas. In countering any threat to its position, the United Kingdom would be entitled to call upon the help of its co-guarantors.

3/ The terminology used by the Security Council has occasionally varied. Thus on 22 December 1967 it invited "the parties" to avail themselves of the good offices offered by the Secretary-General and called upon "the parties" to show moderation and restraint (resolution 244 (1967)). While this wording clearly covers the two communities, it also appears to have been intended to cover the States involved, namely, Greece and Turkey. Similar language also appears in later resolutions - most of which dealt with the renewal of the mandate of the United Nations Peace-keeping Force in Cyprus (UNFICYP).

4/ There is no other provision in the Treaty of Establishment which contains any commitment by the two Cypriot communities to observe the terms of the settlement.

5/ It may be added that the concern that the Security Council has shown over the action that Turkey, as a guarantor of the constitutional structure of Cyprus, was obliged to take in 1974 and thereafter can have no legal bearing upon the identification of the responsibility of the Greek Cypriot community for the prior breach of the Basic Structure and the Constitution in the decade preceding that intervention.

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THE SITUATION IN CENTRAL AMERICA:
THREATS TO INTERNATIONAL PEACE
AND SECURITY AND PEACE INITIATIVES

SECURITY COUNCIL
Forty-fifth year

Letter dated 8 August 1990 from the Permanent Representative of Honduras to the United Nations addressed to the Secretary-General

I have the honour to inform you of the Declaration of the Republic of Honduras, on the third anniversary of the signing of the Procedure for the establishment of a firm and lasting peace in Central America.

At the same time, I request you to have this note and its annex circulated as an official document of the forty-fourth session of the General Assembly, under agenda item 34, and of the Security Council.

(Signed) Roberto FLORES BERMÚDEZ
Ambassador
Permanent Representative

ANNEX

Declaration issued by the Government of Honduras
on 7 August 1990

In August 1987, the Central American Governments, convinced that the time had come to rescue the region from violence and the chaotic social, economic and political situation in which it found itself, agreed to meet in Guatemala City in order to discuss the destiny of the region.

It was absolutely necessary to establish the conditions necessary for bringing to an end the critical internal conflicts which were afflicting some countries of the area, conflicts whose effects affected them all.

Thus the historic decision was reached that they, by themselves and in full independence, should formulate a plan to ensure that the region would enjoy peace, freedom and justice.

With those lofty proposals in mind and imbued with faith and hope, they signed the supremely important document "Procedure for the establishment of a firm and lasting peace in Central America".

The agreement reached, in addition to fostering national reconciliation, democratization and international verification, introduced as an institution the device of "Presidential Summits" which have contributed to understanding in Central America. Thus, in Antigua, the fundamental character of this process was reaffirmed and entitled the "principal mechanism for decision-making and co-ordinating the agreements and measures taken under the Esquipulas procedure".

This decision of the last Summit underlines the effectiveness of the process itself: the continuity of Esquipulas is based on its proved capacity to open up new phases of negotiation. The headway made in pacifying the area makes it possible now to address economic and development issues which had been previously postponed. Honduras is delighted to see how a new spirit of Central American co-operation has taken shape around the peace initiative.

On this date, which recalls a historic and supremely important landmark in the efforts for regional understanding, the Government of Honduras reiterates its determination to continue contributing towards overcoming the challenges which Central America will have to face.

Obviously, the external features of the conflict have diminished, but we must renew our endeavour to achieve more democratic, more developed and more just societies. Peace must become an institution of collaboration for development.

Although the elements and effects of the crisis have not disappeared completely, Honduras optimistically visualizes the possibility of an integrated Central America for the benefit of all.

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SECURITY COUNCIL
Forty-fifth year

Letter dated 13 August 1990 from the representatives of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua to the United Nations addressed to the Secretary-General

We have the honour to transmit herewith the Security Commission Agreement, adopted at San José, Costa Rica, on 31 July 1990 by the Deputy Ministers for Foreign Affairs of Costa Rica (Mr. Hernán Castro), El Salvador (Mr. Ricardo Valdivieso), Guatemala (Mr. Mario Adrián Rosal), Honduras (Mr. Jaime Güell) and Nicaragua (Mr. Ernesto Leal), with Mr. Walter Myers, Ambassador of Panama to Costa Rica, present as an observer, with a view to consolidating the process of achieving peace and democracy and to generating a climate of confidence and security in the region.

We should be grateful if you would arrange for this letter and its annex to be circulated as a document of the forty-fourth session of the General Assembly, under agenda item 34, and of the Security Council.

(Signed) Emilia CASTRO de BARISH
Chargé d'affaires a.i.
of Costa Rica to the
United Nations

(Signed) Alexander A. KRAVETZ
Chargé d'affaires a.i.
of El Salvador to the
United Nations

(Signed) Rafael CASTELLANOS-CARRILLO
Chargé d'affaires of Guatemala
to the United Nations

(Signed) Roberto FLORES BERMUDEZ
Permanent Representative of
Honduras to the United Nations

(Signed) Roberto MAYORGA CORTES
Permanent Representative of
Nicaragua to the United Nations

ANNEX

Security Commission Agreement

San José, 31 July 1990

In accordance with the mandate of the Central American Presidents, as defined in the Guatemala Procedure and the Antigua Declaration, to consolidate the process of achieving peace and democracy and to generate a climate of confidence and security in the region, the Security Commission hereby lays down the following objectives:

1. To ensure that the armed forces of the countries of the region are of such a nature as to defend sovereignty, territory and internal order ather than of an offensive nature;

2. To establish a reasonable balance between the armed forces of the countries of the region, or a proportional and overall equivalence between their weapons, equipment and human strengths, in such a way that they do not represent any threat to neighbouring countries;

3. To define a new model for security relations between the Central American States, based on co-operation, co-ordination, communication and prevention;

4. To secure commitments with respect to the foreign military presence in the region.

For the purposes of achieving the aforementioned objectives, the Commission identifies the following requirements:

(a) It is necessary to define the factors, such as surface area, location, population, geographical features and their area, as well as border features, which must be taken into account in order to determine, by means of a scale of equivalence, each country's military needs.

(b) Inventories must be drawn up to indicate the numbers of weapons and military personnel in each country.

(c) It is necessary to determine what limits or, where necessary, reductions might be required as a result of the comparisons made in accordance with the paragraphs above.

(d) For the purposes of dealing with internal conflicts or subversive movements in the region, the agreed limits may be exceeded in respect of troops and equipment specifically intended for such situations. Reinforcements of this sort will be subject to such verification and control mechanisms as may be established.

(e) Negotiations which have already been opened on the subject of bases, installations, exercises and foreign military advisers will be reviewed and continued.

(f) Verification and control mechanisms will be established.

(g) The Commission will promote agreements designed to create a climate of trust between the States of the region, to encourage good-neighbourliness and to strengthen friendship, development and co-operation between them.

(h) The offers of co-operation made by the Secretaries-General of the Organization of American States and the United Nations will be accepted.

The Security Commission will hold regular meetings at intervals which shall in no case be greater than 60 days, as well as extraordinary meetings when necessary. Such meetings shall be held alternately in each Central American country, in alphabetical order, with the next regular meeting to be held in El Salvador on 10 and 11 September 1990. In the event that a country is not able or prepared to act as host, the meeting will be moved to the country which next follows it on the alphabetical list.

The scales of equivalence, terms for the drawing up of inventories, verification and control mechanisms and advisory services to be provided by the Secretaries-General of the Organization of American States and the United Nations, whose offers were accepted at this meeting, will be determined at the September meeting in El Salvador. The secretariats of both the latter organizations will be invited to take part in the meeting as observers.

The Commission is grateful for the readiness of Colombia, Mexico and Venezuela to assist in negotiations and believes that it would be useful if the support offered by those fraternal countries were to be channelled through the multilateral bodies which are contributing to the work of this Commission.

The delegations of El Salvador, Guatemala, Honduras, Nicaragua and Panama express their gratitude for the hospitality and generosity of the Government of Costa Rica, which were of particular help in ensuring the success of the meeting.

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SECURITY COUNCIL
Forty-fifth year

Note verbale dated 14 August 1990 from the Chargé d'affaires a.i. of the Permanent Mission of El Salvador to the United Nations addressed to the Secretary-General

The Chargé d'affaires a.i. of the Permanent Mission of El Salvador to the United Nations presents his compliments to the Secretary-General of the United Nations and has the honour to transmit the annexed text of the "Agreement on Human Rights" signed in San José, Costa Rica, on 26 July between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN).

The Chargé d'affaires a.i. respectfully requests that this note and its annex should be circulated as an official document of the forty-fourth session of the General Assembly, under agenda item 34, and of the Security Council.

Annex

AGREEMENT ON HUMAN RIGHTS*

I. RESPECT FOR AND GUARANTEE OF HUMAN RIGHTS

The Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (hereinafter referred to as "the Parties"),

Bearing in mind that the legal system of El Salvador provides for the recognition of human rights and the duty of the State to respect and guarantee such rights;

Considering also that the State has assumed obligations of this nature under the many international conventions to which it is a party;

Bearing in mind that the Frente Farabundo Martí para la Liberación Nacional has the capacity and the will and assumes the commitment to respect the inherent attributes of the human person;

Reiterating the common purpose, expressed in the Geneva Agreement, to guarantee unrestricted respect for human rights in El Salvador;

Further reiterating their willingness, also expressed in the Geneva Agreement, to submit in this matter to verification by the United Nations;

On the understanding that for the purposes of the present political agreement, "human rights" shall mean those rights recognized by the Salvadorian legal system, including treaties to which El Salvador is a party, and by the declarations and principles on human rights and humanitarian law adopted by the United Nations and the Organization of American States;

Have concluded the following agreement in pursuance of the initial objective of the Geneva Agreement:

1. All necessary steps and measures shall be taken immediately to avoid any act or practice which constitutes an attempt upon the life, integrity, security or freedom of the individual. Similarly, all necessary steps and measures shall be taken to eliminate any practice involving enforced disappearances and abductions. Priority shall be given to the investigation of any cases of this kind which may arise and to the identification and punishment of the persons found guilty.

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* It is the understanding of the Parties that this Agreement does not exhaust the consideration of the item on human rights and that it is, accordingly, a partial agreement. With the exception of points that are immediately applicable, the Agreement is subject to the package of political agreements to be negotiated for the achievement of the initial objective envisaged in the Geneva Agreement.

2. The full guarantee of the freedom and the integrity of the person requires that certain immediate measures be taken in order to ensure the following:

(a) No one may be arrested for the lawful exercise of his political rights;

(b) An arrest may be made only if ordered by the competent authority in writing and in accordance with the law, and the arrest must be carried out by officers who are properly identified as such;

(c) Anyone arrested must be informed while the arrest is being made of the reasons for the arrest and must be apprised without delay of the charge or charges against him;

(d) No one shall be placed under arrest as a means of intimidation. In particular, arrests shall not be made at night, except in the case of individuals caught in flagrante delicto;

(e) No one in custody shall be held incommunicado. Any person who has been arrested shall have the right to be assisted without delay by legal counsel of his own choosing and the right to communicate freely and privately with such counsel;

(f) No one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

3. In the course of the present negotiations, appropriate legal procedures and timetables shall be determined for the release of individuals who have been imprisoned for political reasons.

4. The fullest possible support shall be given to ensuring the effectiveness of the remedies of amparo and habeas corpus. To this end, the broadest possible publicity shall be given to this Agreement among the public at large and, in particular, among authorities or officers in charge of detention centres. Anyone who hampers the operation of these remedies or provides false information to the judicial authorities shall be punished.

5. The right of all persons to associate freely with others for ideological, religious, political, economic, labour, social, cultural, sporting or other purposes shall be fully guaranteed. Trade union freedom shall be fully respected.

6. Freedom of expression and of the press, the right of reply and the activities of the press shall be fully guaranteed.

7. Displaced persons and returnees shall be provided with the identity documents required by law and shall be guaranteed freedom of movement. They shall also be guaranteed the freedom to carry on their economic activities and to exercise their political and social rights within the framework of the country's institutions.

8. All persons shall be guaranteed freedom of movement in the areas involved in conflict, and the necessary steps shall be taken to provide the inhabitants of such areas with the identity documents required by law.

9. The Parties recognize the necessity of guaranteeing the effective enjoyment of labour rights. This subject will be considered under the agenda item on economic and social problems.

II. INTERNATIONAL VERIFICATION

10. In accordance with the provisions of the Geneva Agreement and the agenda for the negotiations which was adopted in Caracas, the Parties hereby agree to the terms of reference for the United Nations human rights verification mission (hereinafter referred to as "the Mission"), as set out below.

11. The Mission shall devote special attention to the observance of the rights to life, to the integrity and security of the person, to due process of law, to personal liberty, to freedom of expression and to freedom of association.

In this context, a special effort shall be made to clarify any situation which appears to reveal the systematic practice of human rights violations and, in such cases, to recommend appropriate measures for the elimination of the practice to the Party concerned. The foregoing shall be without prejudice to any powers granted to the Mission to consider individual cases.

12. A Director designated by the Secretary-General of the United Nations shall be in charge of the Mission. The Director shall work in close co-operation with existing human rights organizations and bodies in El Salvador. He shall also be assisted by expert advisers. In addition, the Mission shall include as many verification personnel as may be necessary.

13. The purpose of the Mission shall be to investigate the human rights situation in El Salvador as regards acts committed or situations existing as from the date of its establishment and to take any steps it deems appropriate to promote and defend such rights. Accordingly, it shall perform its functions with a view to promoting respect for human rights and their guarantee in El Salvador and helping to do away with those situations in which such respect and guarantees are not duly observed.

14. The Mission's mandate shall include the following powers:

(a) To verify the observance of human rights in El Salvador;

(b) To receive communications from any individual, group of individuals or body in El Salvador, containing reports of human rights violations;

(c) To visit any place or establishment freely and without prior notice;

(d) To hold its meetings freely anywhere in the national territory;

(e) To interview freely and privately any individual, group of individuals or members of bodies or institutions;

(f) To collect by any means it deems appropriate such information as it considers relevant;

(g) To make recommendations to the Parties on the basis of any conclusions it has reached with respect to cases or situations it may have been called upon to consider;

(h) To offer its support to the judicial authorities of El Salvador in order to help improve the judicial procedures for the protection of human rights and increase respect for the rules of due process of law;

(i) To consult the Attorney-General of the Republic;

(j) To plan and carry out an educational and informational campaign on human rights and on the functions of the Mission itself;

(k) To use the media to the extent useful for the fulfilment of its mandate;

(l) To report regularly to the Secretary-General of the United Nations and through him to the General Assembly.

15. The Parties undertake to give their full support to the Mission. To that end, they pledge:

(a) To grant the Mission whatever facilities it may require for the performance of its functions;

(b) To ensure the security of the members of the Mission and of such persons as may have provided it with information, testimony or evidence of any kind;

(c) To provide, as expeditiously as possible, whatever information may be required by the Mission;

(d) To give their earliest consideration to any recommendations made to them by the Mission;

(e) Not to hinder the fulfilment of the Mission's mandate.

16. Each of the Parties shall appoint a delegate to serve as liaison with the Mission.

17. Should the Mission receive communications referring to acts or situations which occurred prior to its establishment, it may transmit them, if it deems it appropriate, to the competent authorities.

18. The fact that a case or situation has been considered by the Mission shall not preclude the application thereto of international procedures for the promotion and protection of human rights.

19. Subject to any arrangements which must be made prior to its establishment, the Mission shall take up its duties as of the cessation of the armed conflict. The Mission shall be established initially for one year and may be renewed.

San José, 26 July 1990

For the Government of El Salvador:

(Signed) Oscar Alfredo SANTAMARIA
Colonel Juan A. MARTINEZ VARELA
Colonel Mauricio Ernesto VARGAS
Abelardo TORRES
David ESCOBAR GALINDO
Rafael Hernán CONTRERAS

For the Frente Farabundo Martí para la Liberación Nacional:

(Signed) Commander Schafik HANDAL
Commander Eduardo SANCHO
Ana Guadalupe MARTINEZ
Salvador SAMAYOA
Dagoberto GUTIERREZ
Marta VALLADARES
Roberto CAÑAS

(Signed) Alvaro de SOTO
Representative of the Secretary-General
of the United Nations

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POLICIES OF APARTHEID OF THE GOVERNMENT OF SOUTH AFRICA

Letter dated 7 August 1990 from the Permanent Representative of Niger to the United Nations addressed to the Secretary-General

I have the honour to request you to have circulated as an official document of the forty-fourth session of the General Assembly, under agenda item 28, the attached document of the African Group of States, entitled "Remarks of the African Group of States to the United Nations on the report of the United Nations Secretary-General regarding the progress made in the implementation of the Declaration on Apartheid and its Destructive Consequences in Southern Africa" (see annex).

(Signed) Moumouni DJERMAKOYE
Ambassador
Chairman of the African Group
Permanent Representative of Niger
to the United Nations

Annex

REMARKS OF THE AFRICAN GROUP TO THE UNITED NATIONS ON THE REPORT OF THE SECRETARY-GENERAL OF THE UNITED NATIONS REGARDING THE PROGRESS MADE IN THE IMPLEMENTATION OF THE DECLARATION ON APARTHEID AND ITS DESTRUCTIVE CONSEQUENCES IN SOUTHERN AFRICA

1.0. The African Group of States to the United Nations met on 2 August 1990 and adopted the following document, as reflecting the Group's observations in relation to the report of the United Nations Secretary-General regarding the progress made in the implementation of the United Nations General Assembly Declaration on Apartheid and its Destructive Consequences in Southern Africa (A/44/960 and Add.1 and 2).

2.0. Pursuant to paragraph 10 of the United Nations Declaration on Apartheid and its Destructive Consequences in Southern Africa, the Secretary-General was requested to prepare a report and submit it to the General Assembly by 1 July 1990 on the progress made in the implementation of the said Declaration. It is with this in mind that the African Group proceeded to examine the Secretary-General's report.

2.1. The Secretary-General's report was also examined in conjunction with the report of the Monitoring Group of the Organization of African Unity (OAU) Ad Hoc Committee on Southern Africa (A/44/963) which, on 19 March 1990, was mandated to monitor the implementation of the Harare Declaration of the OAU and the United Nations Consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa.

3.0. The Secretary-General's report contains a plethora of detail on the situation in South Africa. The numerous interviews that the Secretary-General's Mission to South Africa had with various groups and individuals provide helpful information regarding the situation in South Africa.

4.0. A close examination of the Secretary-General's report, however, reveals a number of issues that are a matter of grave concern.

4.1. For instance, the characterization of the travel of the Secretary-General's team to South Africa as evidence of significant change in the political climate is clearly at variance with the criteria established in the Declaration.

4.2. The Secretary-General's report would appear to place undue premium on views of the South African régime, to the detriment of the views of the liberation movements which are invariably referred to as "allegations", "claims" or "charges".

4.3. The approach of the report in presenting the different points is, in our view, not helpful. Very often the régime's viewpoint is presented as a coherent whole. The prominence given to the corroborative views of nondescript organizations seem to have lent an undue credence to the views of the racist régime, thereby distorting the political realities in South Africa.

4.4. The report does not seem to address the particularly important question of what needs to be done in order to ensure the régime's compliance with the Declaration. In referring to what it calls the "bold and courageous" policy of the de Klerk and the "equally encouraging and statesmanlike" "vision and forbearance" of the opposition as having contributed to the process, the report totally ignores the roles of the liberation movements and the international community in bringing pressure to bear on the régime.

4.5. The extensive quotation in the report of the South African régime's allegation that ANC is "dragging its feet" on the issue of creating a climate conducive to negotiations, does lend itself to the erroneous impression that ANC shares a joint responsibility with the racist régime in that regard, whereas paragraph 6 of the Declaration places this responsibility squarely on the South African régime.

4.6. The report hardly comments on progress made with regard to the Programme of Action to which all member States are committed. Consequently, the report is pointedly silent on the effects sanctions have had on the régime. The report denies the General Assembly a valuable opportunity to assess States members' compliance with the requirements of the Declaration, in particular, the maintenance of sanctions against the régime.

CREATING A CLIMATE CONDUCIVE TO NEGOTIATIONS

5.0. Paragraph 6 (a) of the Declaration calls on the South African régime to, "release all political prisoners and detainees unconditionally and refrain from imposing any restrictions on them".

By its own admission as reflected in paragraphs 41 and 42 of the report, the régime has not complied with this condition.

Paragraph 41 stipulates that:

> "The team was informed by the Minister for Foreign Affairs that, in an announcement made by the State President on 2 February 1990, all persons serving sentences by virtue merely of their membership in previously banned organizations, or for having committed an act which was an offence merely because of the prohibition of the organizations concerned, would be identified and released forthwith. Moreover, the conditions which had been imposed in terms of the security emergency regulations on 374 persons upon their release, were being rescinded with immediate effect, and the regulations which provided for such conditions were likewise being abolished." (A/44/960, p. 16)

Paragraph 42 stipulates that:

> "The Minister for Foreign Affairs also made the following points:

"(a) The Government and the ANC had agreed, as reflected in the Groote Schuur Minute of 4 May 1990 (see A/45/268), to establish a joint working group to make recommendations on the definition of political offences in the South African situation; to discuss, in this regard, time scales; and to advise on norms and mechanisms for dealing with the release of political prisoners and the granting of immunity in respect of political offences to those inside and outside South Africa.

"(b) The Working Group, including representatives of both the Government and the ANC, submitted its report to the Government and the ANC on 21 May 1990. The State President announced in his speech before Parliament on 7 June 1990 that the Government was ready to implement it. The ANC had indicated that it would provide an answer on 10 July 1990. By agreement the contents of the joint report would remain confidential till both sides had agreed.

"(c) The State President also announced on 7 June that, as a gesture, he was releasing 48 prisoners in terms of powers vested in him by the constitution and the Prisons Act. A total of 104 prisoners have been released since 1 February 1990.

"(d) No restrictions have been imposed on any of the released prisoners - with three exceptions where minor conditions were imposed. (One, a foreigner, was deported and requires approval to return; two are required to notify the police if they should leave their district of residence permanently.)

"(e) Further development in the release of prisoners will have to await ANC agreement on the Working Group's report.

"(f) The situation concerning detainees is as follows (as of 14 June 1990):

(i) The last 12 prisoners held under the terms of Emergency Regulations were unconditionally released on 8 June 1990 when the state of emergency was lifted. In Natal, where the state of emergency is still in force, 2 persons are still being held;

(ii) In terms of the Internal Security Act:

a. Section 29 (1): 45 persons are detained for questioning;

b. Section 31: 2 persons are in preventive detention (for their own safety or to prevent witnesses absconding)." (A/44/960, pp. 16-17)

5.1. Paragraph 6 (b) of the Declaration calls on the régime to lift all bans and restrictions on all proscribed and restricted organizations and persons. In paragraphs 9 to 13 of the report of the OAU Monitoring Group (A/44/963), indisputable evidence is adduced to show that, whereas the régime has technically lifted bans and restrictions on organizations and persons, those restrictions are

still in place through the enforcement of the myriad of security legislations including the Internal Security Act.

5.2. Paragraph 6 (c) of the Declaration calls on the régime to remove all troops from the townships. In paragraph 58 of the report, the régime confirms that this has not been complied with. On this question, the report of the OAU Monitoring Group, has this to say on page 17, paragraph 10.0.0:

> "According to oral evidence received by the Monitoring Group, South African Defence Force (SADF) troops remain in the township of Natal and the 'homelands' and persist in their repressive role. In the case of Natal, under the pretext of seeking to arrest internecine violence which it has actually fomented, the regime has in addition sent in the notorious Battalion 32 which had hitherto served in Namibia." (A/44/963, p. 17)

5.3. Paragraph 6 (d) of the Declaration called on the régime to, "end the state of emergency and repeal all legislation, such as the Internal Security Act, designed to circumscribe political activity". Whilst it is true that the state of emergency has been lifted everywhere in South Africa except Natal, its continued existence in Natal places the régime in default with regard to the requirements of the Declaration. Even where the state of emergency has been lifted, the Internal Security Act and other related pieces of legislation designed to circumscribe political activity remain firmly operational. The General Assembly, in calling for the lifting of the state of emergency simultaneously demanded the repeal of the Internal Security Act precisely because the lifting of the state of emergency without at the same time repealing the Internal Security Act and other related legislation would not have had the desired effect of creating a climate conducive to negotiations. On this question, the cited OAU report on page 20, paragraph 13.0.0 argues as follows:

> "The Apartheid regime has a multitude of other laws for the purpose of state repression. Some of these are:
>
> - The Suppression of Communism Act which in effect equates opposition to Apartheid state with the promotion of communism;
>
> - The Suppression of Terrorism Act which in effect equates opposition to Apartheid with terrorism;
>
> - The Defence Act provides for the prohibition of access to designated areas and authorizes various other means of control to prevent 'internal disorder' simply by declaring an area to be operational. 'Under this Act, for instance, the South African Defence Force (SADF) or any portion thereof may be mobilized to combat internal disorders, and members of the SADF used for this purpose have all the powers, duties and immunities enjoyed by or imposed upon, the South African Police under the Police Act';
>
> - The Intimidation Act makes it a criminal offence to intimidate anyone by threats or violence. People organizing protest activities such as strikes and boycotts have been charged under this Act."

5.4. Paragraph 6 (e) of the Declaration called on the régime to "cease all political trials and political executions". On this question, the Secretary-General, on page 26, paragraph 85, of his report, quotes the Human Rights Commission of South Africa as follows:

> "(a) Political trials and imprisonment continue unabated under the Internal Security Act as well as under a plethora of other repressive legislation and common law. About 400 political trials were recorded in 1989 and the rate in 1990 is even higher.
>
> "(b) Political executions have been suspended since 2 February and legislation governing the death sentence is to be amended to some extent (Criminal Law Amendment Bill). Nevertheless, over 300 persons are on death row (70 as a result of political circumstances) with their fate uncertain." (A/44/960, p. 26)

The report of the OAU Monitoring Group (A/44/963), in paragraphs 17.0.0 and 17.1.0 states

> "Although the regime has announced a moratorium on executions and the commutal of the death sentences imposed on twenty-three political prisoners to life imprisonment, sixty-four other ... prisoners remain on death row. Their fate remains uncertain because the Apartheid regime retains the legal power to lift the moratorium and resume executions. There are also over 300 political trials still in progress.
>
> "The regime has yet to accede to Protocol 1 of the Geneva Convention relative to the treatment of prisoners of wars of August 12, 1949, which recognizes wars of National Liberation as legitimate armed conflicts and rules that captured combatants belonging to the armed formations of National Liberation Movements should be treated as prisoners of war. Accordingly, captured combatants of Umkhonto We Sizwe, have been charged with criminal offences, including murder. Some have been sentenced to death and executed. Others convicted are serving sentences. None have ever been accorded prisoners-of-war status."

OBSERVATIONS

6.0. The foregoing provides irrefutable evidence that such changes as may have taken place in South Africa can in no way be construed as constituting profound and irreversible change. Indeed, nowhere in the Secretary-General's report is it stated that the terms of the Declaration have been met.

6.1. In terms of section C, paragraph 9 (d), of the Declaration, which deals with the programme of action, the international community committed itself, "inter alia, to ensure that [it] does not relax existing measures aimed at encouraging the South African régime to eradicate apartheid until there is clear evidence of profound and irreversible changes, bearing in mind the objectives of this Declaration". It is therefore a matter of great regret that some members of the international

community, such as the United Kingdom of Great Britain and Northern Ireland have, in flagrant violation of the letter and spirit of the consensus Declaration, gone ahead and lifted sanctions.

6.2. We therefore reaffirm the conclusion reflected in the report of the OAU Monitoring Group which, inter alia, on page 29, paragraph 2 2.0 has this to say:

> "There has not been any fundamental or irreversible change in South Africa. The so-called changes which have led some members of the international community to believe that pressures should be relaxed vis-à-vis the Apartheid regime fall far short of justifying that belief. Therefore, the recent sojourn of Mr. F. W. de Klerk and the attendant suggestions made to relax sanctions and other measures against the Apartheid regime are tantamount to prematurely rewarding Mr. de Klerk, and jeopardizing efforts to create the necessary climate for negotiations." (A/44/963, p. 29)

6.3. We are of the view that, until the régime has fully complied with the requirements of the Declaration, there can be no climate to negotiations. It is now abundantly clear that such an objective can only be realized through the intensification of comprehensive sanctions against the régime.

7.0. Therefore, the African Group of States to the United Nations appeal to the United Nations Secretary-General and the international community, to intensify their efforts for full implementation of the United Nations General Assembly Declaration on Apartheid and its Destructive Consequences on Southern Africa.

8.0. Meanwhile the African Group of States to the United Nations will remain seized of the developments in South Africa and will undertake appropriate measures within the context of the United Nations Declaration on apartheid and its destructive consequences in South Africa, as adopted by the General Assembly at its sixteenth special session.

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ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF PERIODIC AND GENUINE ELECTIONS

Letter dated 20 August 1990 from the Permanent Representative of Barbados to the United Nations addressed to the Secretary-General

Following consultations within the Group of Latin American and Caribbean States on the draft resolution contained in document A/44/965/Add.1 dated 18 July 1990, I have the honour, in the capacity as Chairman of the aforementioned Group, to forward the attached draft resolution for the consideration of the General Assembly (see annex I).

The draft resolution would seek to respond to the specific requests contained in the letter dated 9 August 1990 addressed to Your Excellency by Her Excellency Mrs. Ertha Pascal Trouillot, Provisional President of the Republic of Haiti (see annex II).

I also have the honour to enclose a copy of the President's letter and to request that it be circulated as a document of the General Assembly.

(Signed) E. Besley MAYCOCK
Permanent Representative of
Barbados to the United Nations
and Chairman of the Group of
Latin American and Caribbean States

ANNEX I

Draft resolution

Assistance to Haiti

The General Assembly,

Taking note of the letters dated 23 June 1/ and 9 August 1990 2/ from the President of the Provisional Government of the Republic of Haiti to the Secretary-General, in which she requested the assistance of the United Nations in order to achieve the peaceful and adequate development of the forthcoming electoral process,

Reaffirming the sovereign right of the people of Haiti to choose and to participate freely in the determination of their own destiny without any external interference,

Considering that the forthcoming general elections will be an important step forward towards establishing representative democracy in Haiti,

1. Requests the Secretary-General, in co-operation with regional organizations and Member States, to provide the broadest possible support to the Haitian Government in meeting to the extent possible the following requests:

(a) A nucleus of observers that would arrive in Haiti prior to voter registration and would leave only after the elections;

(b) Additional observers at the time of the elections and voter registration;

(c) Assistance to the Co-ordinating Committee for the security of the elections, to be provided by high-level advisers;

(d) Observation of the implementation of the electoral security plans by specialized staff with solid experience in the public order field;

2. Urges the international community and relevant international organizations to increase their technical, economic and financial co-operation with Haiti in order to support Haiti's economic and social development efforts;

3. Requests the Secretary-General to submit to it a report on the implementation of the present resolution.

1/ A/44/965, annex.

2/ A/44/973, annex II.

ANNEX II

Letter dated 9 August 1990 from the President of the Provisional Government of Haiti to the Secretary-General

With reference to my letter of 23 June 1990 (A/44/965, annex), I have the honour to provide the following details regarding the different components of the Haitian Government's request relating to the organization of the general elections in November.

The Provisional Electoral Council of Haiti is already receiving technical assistance financed by the United Nations Development Programme. The Haitian Government would like this assistance to continue.

The request of the provisional Government of Haiti comprises two inseparable components: observation and verification of the electoral process, on the one hand; and assistance in drawing up electoral security plans and observing their implementation, on the other.

In its civilian component, the operation would be analogous to the United Nations Observer Mission for the Verification of the Electoral Process in Nicaragua, and would comprise:

(a) A permanent nucleus of some 50 observers who would arrive in Haiti prior to voter registration and leave only after the elections;

(b) Reinforcements at the time of elections and, if possible, of voter registration, bringing the total to a few hundred observers. Co-ordination with the Organization of American States is envisaged.

In its security component, the operation would provide for:

(a) Assistance to the Co-ordinating Committee for security of the elections, provided by two or three advisers;

(b) Observation of the implementation of the electoral security plans by specialized staff, i.e. by observers, the number of whom remains to be determined, with solid experience in the public order field.

The Haitian Government does not wish for, and is not requesting, the dispatch of "Blue Helmets" or of any peace-keeping force to ensure the security of the country, a task for which the Haitian Armed Forces are basically responsible.

It would, however, like the United Nations to assign to Haiti observers whose presence would facilitate the accomplishment of the army's mission as well as the participation of the population in the election operations.

This presence would come to an end immediately after the elections.

I reiterate the Haitian Government's gratitude for your unceasing efforts to ensure the success of Haiti's request.

(Signed) Mrs. Ertha PASCAL TROUILLOT
Provisional President of the Republic